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October 19, 1999

VIA COURIER

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 Twelfth Street, SW
Washington., DC 20554

Re: Comments of NorthPoint Communications, Inc.; CC Docket No. 99-295

Dear Ms. Salas:

Enclosed for filing on behalf of NorthPoint Communications, Inc. ("NorthPoint") please find the original, six copies, and a copy in Word format on diskette of NorthPoint's filing in the above-referenced docket.

If you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

Lori Anne Dolqueist
Counsel for NorthPoint
Communications, Inc.

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NorthPoint Communications, Inc.
Bell Atlantic – New York

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application of Bell Atlantic Pursuant	)	
To Section 271 of the Telecommunications	)	CC Docket No. 99-295
Act of 1996 to Provide In-Region,	)	
InterLATA Services in New York	)	

COMMENTS OF NORTHPOINT COMMUNICATIONS, INC.

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October 19, 1999

SUMMARY

Although Bell Atlantic – New York ("Bell Atlantic" or "BA-NY") has made significant progress toward compliance with section 271 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), it has not yet complied with several competitively significant obligations specific to digital subscriber line ("DSL") services. Bell Atlantic's application is premature and the Commission should require Bell Atlantic to remedy the problems discussed below before granting Bell Atlantic the authority to provide in-region interLATA services.

Bell Atlantic does not provide competitive local exchange carriers ("CLECs") with nondiscriminatory access to operations support systems ("OSS"). Fully mechanized loop prequalification and flow-through for DSL loop orders are necessary to promote the ubiquitous deployment of advanced services. Because Bell Atlantic's mechanized loop prequalification tool is incomplete and inaccurate, DSL CLECs like NorthPoint are in most instances forced to resort to Bell Atlantic's manual processes for qualifying loops for DSL service. Thus, instead of obtaining loop information in real-time through a properly designed electronic system, NorthPoint must dispatch, pay for, and await the results of a technical inquiry that delays order pre-qualification by at least 48 hours. Additionally, the lack of flow-through ordering systems impedes DSL CLECs' ability to meet current and forecasted demand, and leads to significant delays in Bell Atlantic's provision of order status notices.

Although Bell Atlantic claims success in its provisioning of DSL loops, it provided scant data to support its claim. Moreover, Bell Atlantic based the data it provided on an inaccurate definition of when it has provisioned a loop "on time." In addition, although Bell Atlantic finally agreed one month ago to conduct joint testing of DSL loops with CLECs (after almost a year of refusals), it has yet to implement consistently the new joint testing procedures. Therefore, it is too soon to tell if the new procedures will improve Bell Atlantic's DSL loop provisioning performance.

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InterLATA Services in New York	)	

COMMENTS OF NORTHPOINT COMMUNICATIONS, INC.

NorthPoint Communications, Inc. ("NorthPoint"), by undersigned counsel, hereby submits its comments in the above-referenced docket. NorthPoint is a competitive provider of DSL services. NorthPoint's comments herein address only those issues which directly and most critically affect NorthPoint's ability to compete in the DSL market. NorthPoint takes no position on whether Bell Atlantic has complied with the section 271 checklist items not specific to DSL competition.

I. INTRODUCTION

While Bell Atlantic has made tremendous progress toward compliance with section 271 of the Act, it has not developed and deployed the requisite systems and processes to support competitive DSL services. As reinforced in each of the Commission's orders denying section 271 authority, it is the applicant's burden to prove

that it is in compliance at the time it files its application with the Commission. The Commission stated in its October 1998 *BellSouth Louisiana II Order*:[1]

> "We stress that a BOC [Bell Operating Company] submitting factual evidence in support of its application bears the burden of ensuring that the significance of the evidence is readily apparent. *Ameritech Michigan*, 12 FCC Rcd at 20577. We further note that promises of future performance have no probative value in demonstrating present compliance with the requirements of section 271. *Id.* at 20573-74."

Despite Bell Atlantic's protestations that it can or will soon be servicing DSL CLECs in compliance with its section 251, 252 and 271 obligations, Bell Atlantic's DSL-related OSS functionality is deficient. Its execution - the ability to actually deliver the loops that DSL CLECs like NorthPoint can use to provide DSL services – remains substandard. Specifically, Bell Atlantic's loop prequalification process is excessively manual, Bell Atlantic's lack of flow-through capabilities for DSL loop orders does not meet current (let alone foreseeable) demand, Bell Atlantic does not provide nondiscriminatory access to order status notices, and Bell Atlantic has just begun to implement joint testing procedures to address its serious DSL loop provisioning problems. Accordingly, the Commission should require Bell Atlantic to fix its DSL loop OSS and provisioning failures *before* granting Bell Atlantic interLATA authority.

Bell Atlantic's application fails to provide proof of compliance with regard to wholesale DSL loop products because it relies, in part, on promises of future compliance. Other than Bell Atlantic's self-serving affidavits that declare "success," Bell Atlantic presents no evidence regarding its recently implemented systems and processes. Bell Atlantic's reliance on future implementation denies parties to this proceeding the

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[1] *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana,* Memorandum and Order, FCC 98-271, CC Docket No. 98-121, 13 FCC Rcd 20599, 20637 (footnote 148), rel. October 18, 1998 ("*BellSouth Louisiana II Order*").

opportunity to appropriately address its claims. While NorthPoint believes that Bell Atlantic intends to comply with the requirements of the Act, Bell Atlantic's intentions for future performance are irrelevant to whether Bell Atlantic has met its burden of proof today.

Moreover, contrary to Bell Atlantic's claim, advanced services, including DSL services, are not "new."[2] DSL CLECs first began offering services in New York in August 1998.[3] Even before that, CLECs offered services using integrated services digital network ("ISDN")–capable loops, that require many of the same systems and processes from Bell Atlantic. Bell Atlantic's claim that DSL services are "new" appears to be an attempt to justify what the on-going proceedings before the New York Public Service Commission have revealed – Bell Atlantic has not yet complied with several competitively significant obligations specific to DSL services.

II. BELL ATLANTIC DOES NOT PROVIDE DSL CLECs WITH NONDISCRIMINATORY ACCESS TO OPERATIONS SUPPORT SYSTEMS ("OSS").

Of all the section 271 issues, the Commission has set forth the clearest roadmap for a BOC to provide nondiscriminatory access to OSS. The Commission established a two-part inquiry to evaluate a BOC's OSS: first, the Commission must determine whether the BOC has "deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them," and second, the Commission must determine

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[2] Application by Bell Atlantic – New York for Authorization to Provide In-Region, InterLATA Services in New York, September 29, 1999, at 21 ("Bell Atlantic Application").

"whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[4] Under the second part of the inquiry, the Commission must assess whether the BOC's OSS is capable of handling current and reasonably foreseeable demand. With regard to competitive DSL services, as discussed below, Bell Atlantic's failure to comply with the Commission's guidelines, unless remedied, will continue to impede the development of DSL competition.

A. A Fully Mechanized Loop Prequalification Process And Flow-Through Systems For DSL Loop Orders Are Necessary To Promote The Ubiquitous Deployment Of Advanced Services.

A fundamental goal of the Telecommunications Act of 1996 was to promote the ubiquitous deployment of advanced services.[5] To further this goal, incumbent local exchange carriers ("ILECs") must develop and deploy systems and processes capable of meeting current and anticipated demand for competitive DSL services.

Despite Bell Atlantic's claims to the contrary, Bell Atlantic has not yet deployed such systems in its New York territory. Though Bell Atlantic touts the availability of a mechanized *ADSL* loop prequalification tool, the reality is that it is insufficient to serve a competitive DSL marketplace. Moreover, manual ordering systems are inherently limited in their reliability and capacity. Thus, prior to declaring that Bell Atlantic has

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[3] Bell Atlantic Application, Declaration of William E. Taylor, Attachment A at ¶ 66.

[4] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, FCC 97-298, CC Docket No. 97-137, 12 FCC Rcd 20543, 20616 (¶ 136), rel. August 17, 1997 ("*Ameritech Michigan Order*").

[5] *See, Deployment of Wireline Services Offering Advanced Telecommunications Capability,* FCC 99-48, CC Docket No. 98-147, 14 FCC Rcd 4761, 4764 (¶ 1), rel. March 31, 1999. (*citing,* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996) and Letter from Larry Irving, Assistant Secretary for Communications and Information, United States Department of Commerce, to William Kennard, Chairman, Federal Communications Commission, CC Docket No. 98-147, at 2

satisfied its obligations under sections 251, 252 and 271, these systems should be replaced with mechanized systems capable of providing all of the information necessary to determine whether a loop is xDSL-capable[6] and flowing-through local service requests for xDSL-capable loops into Bell Atlantic's legacy ordering systems. The KPMG test relied on so heavily in Bell Atlantic's application simply omitted xDSL services, and specifically, whether the current systems and processes were adequate to cover anticipated demand.

Current demand for xDSL services outstrips the capacity of Bell Atlantic's manual processes already, and consumers' demand for xDSL services is growing at an accelerated pace. Without a reliable and effective mechanized loop prequalification tool and flow-through ordering systems for CLECs, the limited capacity of Bell Atlantic's manual processes will be further taxed and exceeded by the volume of DSL CLEC orders. The absence of mechanized, robust systems to qualify and order DSL loops severely constrains NorthPoint's ability to scale its business, and to help bring ubiquitous broadband service competition to New York's underserved residential and small business market.[7]

Bell Atlantic's inability to scale its manual processes is not a problem that can await a leisurely resolution; DSL demand is growing exponentially. The following

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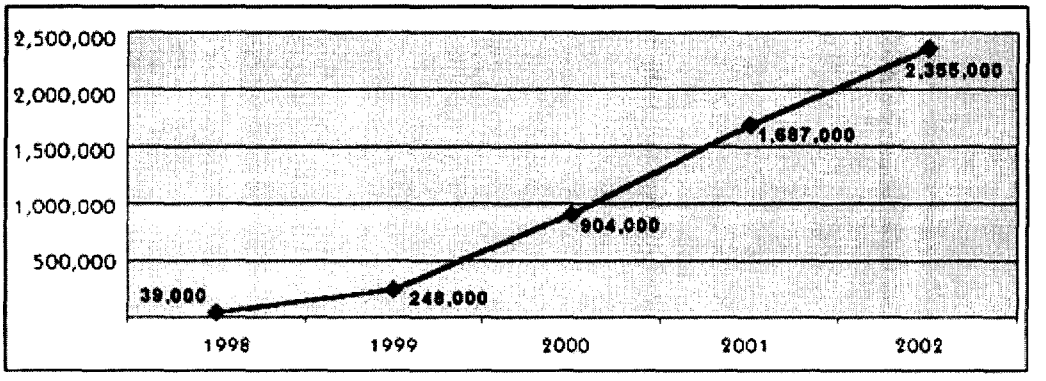
(filed Jan. 11, 1999) (stating that the 1996 Act embodies the belief that competition is the engine of infrastructure investment in the deployment of advanced services.)).

[6] The "x" in xDSL is a place holder for the various types of DSL service, such as ADSL (asymmetric digital subscriber line), HDSL (high-speed digital subscriber line), UDSL (universal digital subscriber line), VDSL (very-high speed digital subscriber line), and RADSL (rate-adaptive digital subscriber line).

[7] Attachment A, Declaration of Thomas M. Aulisio at ¶ 6 ("Aulisio Declaration").

graph, taken from xDSL.com, Analysis of DSL Technologies[8] illustrates the tremendous growth expected for DSL services over the next two years.



While there is undoubtedly room for debate of whether the chart represents a precise estimate of current and future demand for DSL services, there can be little doubt that DSL services, about to enter its third year, is quickly becoming a vital means to bring ubiquitous advanced services to residential and business consumers. Lack of mechanized access for DSL CLECs will severely impede DSL CLECs' ability to compete during this initial period of exponential growth.

B. Bell Atlantic's Loop Prequalification Process Is Still Excessively Manual for CLECs Offering DSL Services.

Bell Atlantic touts the availability of a mechanized loop qualification database to "qualify" loops as "ADSL-ready."[9] But this system is deficient both in its design and in its implementation. As currently deployed, Bell Atlantic's mechanized loop prequalification tool is insufficient for the following reasons: (1) loop qualification information has not yet been loaded into the database for a large percentage of central offices where CLECs are collocated; (2) the system is unstable and often fails to process

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[8] *See,* xDSL.com, Analysis of DSL Technologies, Aulisio Declaration, Exhibit E. The article can also be viewed at http://www.xdsl.com/content/resources/deployment_info.asp.

[9] Bell Atlantic Application at 23.

accurately submitted queries; and (3) even when the interface works, the loop information provided by the system is tailored to Bell Atlantic's very limited ADSL product and is insufficient to support competitive DSL services. Because Bell Atlantic's DSL loop prequalification system is both limited and unreliable, DSL CLECs like NorthPoint are forced to employ Bell Atlantic's expensive and time-consuming manual loop qualification procedures to determine whether service can be provided to any given end-user.[10] This excessive reliance on manual procedures impedes NorthPoint's ability to respond promptly to its customers' requests for service, and thus, impedes NorthPoint's ability to compete in the advanced services market.[11]

Under the Commission's existing rules, ILECs such as Bell Atlantic are required to provide competing carriers with nondiscriminatory access to pre-ordering/loop pre-qualification information to support competitive DSL services. If CLECs are to receive a meaningful opportunity to compete, they must be able to determine during the pre-ordering process, as quickly and efficiently as can Bell Atlantic, whether or not a loop is capable of supporting xDSL-based services. As the Commission stated, "An incumbent LEC does not meet the nondiscrimination requirement if it has the capability electronically to identify xDSL-capable loops, either on an individual basis or for an entire central office, while competing providers are relegated to a slower and more

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[10] *See* Aulisio Declaration at ¶¶ 3-5. Bell Atlantic charges CLECs $62.13 per loop for a Manual Loop Qualification, which provides information on total metallic loop length, presence of load coils (yes or no), presence of Digital Loop Carrier ("DLC") (yes or no), and qualification for ADSL/HDSL (yes or no). Bell Atlantic charges CLECs $123.67 per loop for an Engineering Query, which provides information vital to a CLEC's decision whether to condition a loop, such as the number and location of bridged taps, number and location of load coils, location of DLC and cable gauge at specific locations. P.S.C. Tariff No. 916, § 5.5.

[11] Aulisio Declaration at ¶ 4.

cumbersome process to obtain that information."[12] Because the deficiencies in its mechanized loop qualification database force CLECs a greater percentage of the time than Bell Atlantic to rely on manual pre-order loop qualification procedures, Bell Atlantic violates the Commission's requirement that loop qualification information be provided during the pre-ordering phase on a nondiscriminatory basis.

1. The Mechanized Loop Qualification Database is Not Operationally Ready.

Bell Atlantic points to its mechanized loop qualification database as proof that it is meeting its obligations under the section 271 checklist.[13] However, Bell Atlantic admits that the database is currently incomplete and that it is in the process of loading information into the database that will provide better coverage of central offices served by CLECs.[14] According to Bell Atlantic's own data, only about 57% of its central offices are currently loaded into the database.[15] Although Bell Atlantic claims that this percentage will increase significantly through the first quarter of 2000,[16] the fact remains that the mechanized loop qualification database is only able to provide loop qualification information for slightly more than half of Bell Atlantic's central offices. Consequently,

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12 *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-188, CC Docket No. 98-147, 12 FCC Rcd 24012, 24039 (¶ 56), rel. Aug. 7, 1998 ("*1998 Advanced Services Order*").

13 Bell Atlantic Application at 23.

14 Bell Atlantic states: "Bell Atlantic is currently engaged in a laborious survey of its entire loop inventory – on an office-by-office basis..." *Id.*

15 Bell Atlantic represents that 131 central offices are currently loaded into the database. *See* Bell Atlantic Application, Joint Declaration of Stuart Miller and Marion C. Jordan at ¶ 17 ("Miller/Jordan Declaration"). Bell Atlantic further represents that by the end of 1999, an additional 81 central offices will be loaded into the database bringing the total to 212 central offices, and that the 212 central offices will represent 93% of Bell Atlantic's total number of central offices. *Id.* Therefore, according to Bell Atlantic, only approximately 57% of the central offices are currently loaded in the mechanized loop qualification database of a total 228 central offices.

CLECs frequently must use Bell Atlantic's more costly and time-consuming manual loop prequalification measures.

Bell Atlantic also claims that it initially focused its loop inventory survey by targeting the central offices where CLECs are collocated.[17] However, without any independently verified data to support its claim, Bell Atlantic's representations are suspect. Bell Atlantic claims to offer retail ADSL services to end-users only on loops prequalified in the database.[18] It would simply make no sense for Bell Atlantic to invest the time and resources to install equipment to provide retail ADSL services in a central office, only to not offer services because it had not loaded the necessary into its database. Instead of targeting central offices where CLECs are collocated, Bell Atlantic probably loaded the information first for those central offices in which it installed or was considering whether to install equipment to offer retail ADSL services. Therefore, it is more likely that central offices not yet included in the mechanized database are those in which CLECs are collocated but Bell Atlantic is not currently planning to offer DSL services. Bell Atlantic has not offered any evidence demonstrating that it is populating its mechanized loop qualification database in a nondiscriminatory manner, beyond its unsubstantiated claim that it is targeting central offices in which CLECs are collocated.[19]

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16 Bell Atlantic represents that the percentage will be 93% by the end of 1999 and 99% by the end of the first quarter of 2000. *Id.*

17 Bell Atlantic Application at 23.

18 Bell Atlantic states: "Bell Atlantic will not provide ADSL services to retail customers if the loop is not already in the prequalification database, and consequently, will not manually provide qualification information for its own retail representatives on those loops." Miller/Jordan Declaration at ¶17.

19 To determine whether Bell Atlantic is populating its mechanized loop qualification database in a discriminatory manner, various CLECs proposed to the New York Public Service Commission ("PSC") carrier-to-carrier metric working group a metric that would assess the accuracy of BA-NY's claim.

Irrespective of NorthPoint's belief, the Commission should require Bell Atlantic to provide data to assess the veracity of Bell Atlantic's claim that it provides parity access to loop prequalification information. The issue is not whether the *manner* in which CLECs and Bell Atlantic access the mechanized loop qualification database is equivalent – the issue is *whether the information is present in the database for CLECs.*

2. The Mechanized Loop Pre-Qualification Database Still Has System Glitches That Make It Unreliable.

Even where Bell Atlantic indicates that loop qualification information is loaded into the database for a particular loop, Bell Atlantic's loop pre-qualification database does not yet work reliably. NorthPoint has consistently experienced systemic problems with the interface that make it, as a practical matter, more burdensome to use than the manual processes.

For example, addresses validated by Bell Atlantic's address validation preordering interface are often incompatible with the mechanized loop prequalification database. After confirming that Bell Atlantic has represented that the relevant central office is loaded into the database, NorthPoint's service representatives will use Bell Atlantic's address validation interface to confirm the accuracy of the address for the order. The mechanized interface will often respond to the "validated" address with the response "address not found."[20]

Bell Atlantic should be required to provide performance data or submit to additional independent OSS testing to assess the functionality of its mechanized loop pre-

[20] *See* Aulisio Declaration at ¶ 3. Bell Atlantic advised CLECs to enter the telephone number (not the validated address) into the loop qualification database until the issue was resolved. NorthPoint provides documentation of three examples of this problem at Aulisio Declaration, Exhibits A-D. Although NorthPoint has experienced this problem on numerous orders, in light of Bell Atlantic's recognition that a problem does exist, NorthPoint has only provided three orders as a demonstration of the problem.

qualification interface. Bell Atlantic's self-serving representations that it is in compliance are not adequate evidence of compliance, nor is it consistent with the Commission's emphasis on data to verify the capabilities of a BOC's OSS.[21]

3. The Mechanized Loop Qualification Database Does Not Provide Necessary Information Regarding Whether NorthPoint Can Provide Its DSL Services On A Particular Loop.

To effectively compete in the DSL market, NorthPoint must consistently receive real-time electronic access to information regarding loop length, wire gauge and gauge changes, number and location of load coils, number and location of bridge taps, DLC, presence of pair gain devices and presence of digital access main lines ("DAMLs").[22] This data is essential to evaluate whether NorthPoint can provide its DSL services – including DSL services unavailable from Bell Atlantic that are designed for less dense markets and end-user premises at distances more than 24 kilofeet from central offices. Further, this information must be made available in "real-time" so as to permit NorthPoint to advise its customers – while they are on the phone – what services can be provided without having to repeatedly ratchet down consumer expectations as Bell Atlantic responds, serially, to loop queries that often must await manual intervention. Any system that provides less information, or provides it less timely than real-time, necessarily will impair the ability of competitors like NorthPoint to bring broadband services to consumers on the scale anticipated by the Commission, consumers, competitive carriers, and the ILECs. Bell Atlantic's mechanized loop prequalification

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[21] As the Commission stated in the *Ameritech Michigan Order*, 12 FCC Rcd at 20618 (¶ 138), "We agree with the Department of Justice that the most probative evidence that OSS functions are operationally ready is actual commercial usage. Carrier-to-carrier testing, independent third-party testing, and internal testing also can provide valuable evidence pertaining to operational readiness, but are less reliable indicators of actual performance than commercial usage." (citations omitted).

[22] *See* Aulisio Declaration at ¶ 5.

interface currently only provides loop length and whether the loop is qualified for Bell Atlantic's *ADSL* services.

Bell Atlantic claims that via the mechanized loop qualification database it "provides competing carriers with all of the same loop 'qualification' information that is available to its own *retail marketing representatives*, and more."[23] But this claim is doubly misleading: First, the limited information provided to Bell Atlantic's retail marketing representatives (theoretical loop length) is demonstrably inadequate to evaluate the ability of a competing carrier to provide a variety of *other* DSL services; and second, Bell Atlantic's reference to "retail" personnel conveniently ignores the fact that, although some information may be contained in paper records, Bell Atlantic's *engineering and support staff* do have electronic access to the electronic databases in which much of this information is contained – access that is flatly denied competitive carriers like NorthPoint. Accordingly, to achieve true parity, NorthPoint should have equivalent access to the paper records and electronic access to the competitively vital loop qualification information contained in the databases.

Additionally, as stated above, Bell Atlantic's mechanized loop qualification database qualifies loops for ADSL service *only*.[24] This is in direct violation of the Commission's instructions in the *1998 Advanced Services Order* that prequalification should provided for all types of DSL:[25]

> "If new entrants are to have a meaningful opportunity to compete, they must be able to determine, during the pre-ordering process, as quickly and as efficiently as can the incumbent, whether or not a loop is capable of supporting *xDSL services*."

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23 Bell Atlantic Application at 23 (italics added).

24 *Id.*

25 *1998 Advanced Services Order*, 13 FCC Rcd at 24039 (¶ 56) (emphasis added).

C. Bell Atlantic Does Not Provide CLECs With Nondiscriminatory Access To Ordering Systems For DSL-Capable Loop Orders.

Bell Atlantic has not deployed the necessary systems and processes to provide DSL CLECs with nondiscriminatory access to ordering functions. Efficient DSL CLECs will not receive the requisite *meaningful opportunity to compete* in New York unless and until Bell Atlantic has deployed flow-through ordering capability for DSL-capable loops.[26] The manual systems and processes currently utilized by Bell Atlantic to support competitive DSL services are inherently error-prone. Each time a person must manually evaluate, edit, and/or retype information contained in a local service request, the potential for human error also increases. Even the most well trained and well-intentioned of Bell Atlantic service representatives will commit processing errors when forced to use manual systems.

1. Bell Atlantic's OSS Must Support Each Of The Three Modes Of Competition And Must Not Favor One Strategy Over Another.

The Commission clarified that a BOC's OSS must support each of the modes of competitive entry (resale-based, UNE-based and interconnection), and may not favor any mode over another.[27] Accordingly, DSL CLECs must receive nondiscriminatory access when compared to other CLECs (*e.g.*, resale-based CLECs).

The Commission established the principle that a BOC may not restrict access to its legacy systems such that it places "limits on the processing of information between the interface and the [BOC's] legacy systems"[28] and that each function that an BOC performs

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[26] DSL-capable loops are unbundled network elements ("UNEs"), and thus, Bell Atlantic is required to provide access to ordering systems at a level that provides an efficient competitor a meaningful opportunity to compete. *Ameritech Michigan Order*, 12 FCC Rcd at 20619-20620 (¶ 141).

[27] *Id.* at 20615 (¶ 133).

[28] *Id.* at 20616 (¶135).

for itself electronically must also be provided to CLECs in some electronic equivalent access.[29] These requirements apply to all types of CLEC OSS access, including those functions for which there are no retail analogs (*e.g.*, ordering DSL-capable loops). The ordering functions for retail analogs, such as the ordering of resale services, require a BOC to provide equivalent access in terms of quality, accuracy and timeliness.[30] Although by definition it would be impossible for the equivalent access standard to apply where there is no retail analog, this does not mean that a CLEC ordering a non-retail analog should receive inferior access. This "qualitative" similarity between the *equivalent access* and the *meaningful opportunity to compete* standards is at the core of the nondiscrimination obligation, and should be clarified and incorporated into the Commission's evaluation of Bell Atlantic's OSS.

Bell Atlantic has focused practically all of its efforts on the development and deployment of OSS to support resale-based services. For example, 89% of wholesale resale orders are designed to flow-through, but only 17.2% of wholesale UNE orders are designed to flow through.[31] Bell Atlantic's emphasis on designing flow-through systems for resale orders as opposed to UNE orders demonstrates its bias against facilities-based providers.

Bell Atlantic's excessive focus on resale-based OSS is discriminatory against facilities-based CLECs seeking to migrate customers away from Bell Atlantic's network and onto the CLECs' networks. It is contrary to Commission mandates, and should not be sanctioned by the Commission. The principle of nondiscrimination not only

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29 *Id.* at 20616-20617 (¶137).

30 *Id.* at 20618-20619 (¶139)

31 Bell Atlantic Application, Declaration of George S. Dowell and Julie A. Canny, Attachment F.

encompasses equality between Bell Atlantic and CLECs, but it also includes equal treatment by Bell Atlantic of different CLECs with different modes of competitive entry.

2. Lack Of Flow-Through Ordering Systems Delays DSL CLECs' Access To Order Status Notices.

The Commission's prior section 271 Orders have discussed, at length, a BOC's obligations to provide equivalent access to order status notices (*i.e.,* firm order confirmation notices, reject notices, jeopardy notices, and completion notices).[32] As a practical matter, Bell Atlantic will not be able to provide DSL CLECs with equivalent access to order status notices until it has deployed real-time flow-through ordering systems for DSL-capable loop orders.

a. Differences In BA-NY's Provision Of Order Status Notices Are Competitively Significant.

In its application, Bell Atlantic appropriately asserts that the "parity" obligation does not require perfection.[33] Bell Atlantic further proposes that where "differences [in performance] exist, they are not so large as to be competitively significant."[34] NorthPoint agrees with Bell Atlantic that "competitive significance" is an appropriate gauge of whether a CLEC has received equivalent access, or "parity," to any given OSS functions. However, NorthPoint disagrees with Bell Atlantic's interpretation of what is competitively significant.

NorthPoint proposes that *a discrepancy in performance is competitively significant, if, because of the BOC's superior access, a customer would likely perceive a qualitative difference in performance between the BOC's performance and the CLEC's performance.* For example, if a BOC's end user, while on the telephone placing an order,

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32 *See generally, BellSouth Louisiana II*, 13 FCC Rcd at 20677-20687 (¶¶ 117-133).

33 Bell Atlantic Application at 11.

34 *Id.* (*citing, Ameritech Michigan Order*, 12 FCC Rcd at 20693 (¶ 278).)

could obtain a due date for when his service will be provisioned, then a CLEC should have the same capability. It would be competitively significant that a CLEC could not inform the end user of the expected due date until, as applicable to DSL CLECs, 24 to 72 hours after the end user placed the order.[35] Similarly, if a BOC's retail service representative could learn within a matter of seconds of an error included in an order, then a CLEC service representative should have the same capability. Delays in detecting errors lead to unnecessary delays in service provisioning, and ultimately lead to customer dissatisfaction.

b. <u>As The Obligation Was Defined In Prior Commission Section 271 Orders, BA-NY Has No Jeopardy Notice Process.</u>

The Commission set forth a clear requirement for BOCs to provide jeopardy notices if, for any reason, the BOC will not provision services on the due date set forth on the firm order confirmation ("FOC"). The Commission stated in relevant part:[36]

> "After a competing carrier has received a FOC notice with a committed due date for installation of a customer's service, it is critical that the BOC provide the competing carrier with a timely jeopardy notice if the BOC, for any reason, can no longer meet that due date."

Bell Atlantic's application erroneously claims to provide jeopardy notices twice daily.[37] But Bell Atlantic is playing word-games: upon closer scrutiny, what Bell Atlantic calls a "jeopardy notice" is really just notice that Bell Atlantic has missed a due date. This "missed appointment notice" is delivered to CLECs *after the fact*, after the

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35 *See* Miller/Jordan Declaration at ¶ 49.

36 *BellSouth Louisiana II Order*, 13 FCC Rcd at 20686 (¶ 131) (*Citing*, *Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana*, FCC 98-17, CC Docket No. 97-231, 13 FCC Rcd 6245, 6269 (¶ 39), rel. February 4, 1998; *see Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, FCC 97-418, CC Docket No. 97-208, 13 FCC Rcd 539, 615 (¶ 139), rel. December 24, 1997.

consumer has waited for the Bell Atlantic technician, and *after* the DSL CLEC has contracted and arranged for inside wire services that could have been rescheduled. Bell Atlantic currently has no process in place to provide notice *before* the due date that it is going to miss the due date, so DSL CLECs like NorthPoint are constantly faced with disappointed customers who waited for the technicians that NorthPoint promised, but that never came. The Commission should not overlook Bell Atlantic's efforts to disguise this deficiency.

III. BELL ATLANTIC FAILED TO DEMONSTRATE THAT IT HAS MET ITS SECTION 271 OBLIGATIONS REGARDING DSL LOOP PROVISIONING.

As discussed above, promises of future performance do not demonstrate compliance with the requirements of section 271. However, promises are nearly all that Bell Atlantic offered to prove that it is meeting its section 271 checklist obligations regarding DSL loop provisioning. In its application, Bell Atlantic offered only token data that specifically relates to its DSL loop provisioning performance. Instead of the data necessary to prove that it is meeting its section 271 obligations, Bell Atlantic made general declarations such as "BA-NY's performance on ADSL loops is satisfactory"[38] and mentioned an ongoing collaborative proceeding conducted by the New York PSC to refine the loop DSL loop provisioning process.[39] It is too soon to tell if Bell Atlantic has complied with the requirements of the section 271 checklist as they apply to DSL loops. Accordingly, Bell Atlantic has not met its burden of proof.

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37 Bell Atlantic Application at 48 (*citing,* Miller/Jordan Declaration at ¶67).

38 Bell Atlantic Application, Joint Declaration of Paul A. Lacouture and Arthur J. Troy at ¶ 82 ("Lacouture/Troy Declaration").

39 Bell Atlantic Application at 21.

A. Bell Atlantic Premised Its Data On An Inaccurate Definition Of When A Loop Is "On Time."

The Commission has before it no evidence concerning DSL loop provisioning from KPMG, which did not test Bell Atlantic's capabilities in that regard.[40] To support its claim that it is meeting section 271 obligations, Bell Atlantic provided data for August 1999 on the average for ADSL loop provisioning interval and the percentage of missed appointments.[41] Bell Atlantic also included data on the number of premium loops[42] it provisioned between January 1999 and August 1999 and the percentage of missed appointments for these loops.[43]

Although Bell Atlantic claims that it provides 93% of its DSL loops on time[44] and provides 97% of its premium loops on time,[45] these figures become meaningless upon examination of the *quality* of loops provided. The fact is, a substantial number of DSL loop tendered by Bell Atlantic to DSL CLECs like NorthPoint (and deemed "completed" in BA's measurement) are defective, open, impaired, or in some significant manner wholly "incomplete." Indeed, Bell Atlantic admitted at the New York PSC technical conference that it was receiving trouble reports within thirty days on 12% of its provisioned premium loops and that the percentage of trouble reports was probably similar for DSL loops.[46] As Bell Atlantic has admitted, the high instance of trouble

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40 New York PSC Case 97-C-0271 Technical Conference Transcript, 3669-3679 (Sears) ("NY Transcript").

41 Lacouture/Troy Declaration, Attachment K.

42 Before Bell Atlantic made DSL loops available, many CLECs used premium loops to provide DSL service.

43 Lacouture/Troy Declaration, Attachment J.

44 Lacouture/Troy Declaration at ¶ 82

45 Bell Atlantic Application at 21.

46 NY Transcript 3766 (White). The percentage of trouble reports for premium and DSL loops is significantly higher than the percentage of trouble reports for loops in general. For example, Bell Atlantic claims that "From April through August 1999, CLECs' lines generated "trouble reports" (i.e., a notice that the customer is experiencing

reports in the first thirty days following provisioning was most likely caused by the fact that, unlike a POTS loop, Bell Atlantic is not yet able to determine on its own whether it has provisioned the loop correctly.[47] Until recently, Bell Atlantic refused to test these loops with CLECs. As a result, Bell Atlantic delivered loops that did not work, and end users were further inconvenienced with repeated service calls and delays that could have, and should have, been avoided.[48]

Bell Atlantic also frequently failed to provide CLECs critical "demarc" information as part of the loop provisioning process. Inside wire technicians use "demarc" information, which identifies the CLEC loop, to connect the copper pair to the end-user's inside wire. Without "demarc" information, the inside wire technician cannot complete service and must be dispatched by the CLEC again after another Bell Atlantic technician returns to provide the necessary tags and "demarc" information, causing additional service delays.[49]

If Bell Atlantic provisions a DSL loop incorrectly or if a Bell Atlantic technician fails to provide the necessary "demarc" information, the CLEC is unable to use the loop. The fact that Bell Atlantic may have provisioned the loop on time is of little significance to the CLEC or to the customer who must wait for Bell Atlantic to return and correct its mistakes. Therefore, because the loops that Bell Atlantic claims it provisioned on time include loops that CLECs were unable to use, the data Bell Atlantic included with its application is unreliable.

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some form of trouble on the line) within 30 days of installation . . . on 3.9 percent of unbundled loop orders." Bell Atlantic Application at 48-49 (citations omitted).

47 *See* NY Transcript 3760-3766 (White).

48 *See* Aulisio Declaration at ¶¶ 7-8.

49 *Id.* at ¶ 9; *See* Attachment B, NorthPoint Letter to Lawrence E. Strickling, Robert C. Atkinson, Frank C. Lamancusa, Bell Atlantic's Failure to Provide Nondiscriminatory

B. It Is Too Soon To Tell If Bell Atlantic Will Be Able To Meet Its Section 271 Obligations Regarding DSL Loop Provisioning.

To address the loop provisioning problems discussed above, the New York PSC established a collaborative proceeding to refine the DSL loop provisioning process. Bell Atlantic and interested CLECs have met regularly over the last few months to discuss the problems with Bell Atlantic's DSL loop provisioning process and develop solutions. After close to a year of refusals, Bell Atlantic finally agreed one month ago to test DSL loops with CLECs jointly.

Under Bell Atlantic's joint testing process, which Bell Atlantic and the CLECs are still refining, Bell Atlantic has committed to complete the necessary central office wiring two days before the due date. The CLEC runs a test of the central office wiring two days prior to the due date and shares the results with Bell Atlantic, giving Bell Atlantic the opportunity to correct any mistakes or defects. On the due date, after completing the installation, the Bell Atlantic technician calls a toll-free number provided by the CLEC and performs a cooperative test with the CLEC. If the results of the cooperative test are satisfactory and the technician provides the necessary "demarc" information, the CLEC will give the Bell Atlantic technician a serial number to indicate that Bell Atlantic has provisioned the loop correctly. Bell Atlantic and various CLECs have been meeting regularly to evaluate and modify the process as necessary. Many issues remain open for discussion, such as issues related to DSL loop qualification information, loop conditioning procedure and prices, and maintenance and repair.

Because Bell Atlantic has only offered joint testing for a month, sufficient data to show that the joint testing process will allow Bell Atlantic to provide unbundled DSL

Interconnection, Collocation, UNEs and OSS, March 12, 1999, at 15 ("NorthPoint Complaint"); Affidavit of Thomas Aulisio, New York Case 97-C-0271, at ¶¶ 17-18.

loops to CLECs in quantities that CLECs may reasonably demand and at an acceptable level of quality is unavailable.[50] Although NorthPoint remains optimistic that the joint testing process will resolve at least some of the problems associated with Bell Atlantic's DSL loop provisioning, initial data shows that the process has not yet significantly improved Bell Atlantic's performance. Since NorthPoint began joint testing with Bell Atlantic on September 20, 1999, Bell Atlantic has only called on 40% of all NorthPoint orders.[51] Bell Atlantic's failure to conduct joint testing consistently has added to the backlog of NorthPoint's orders and has rendered DSL CLECs' very limited experience with the new joint-testing procedures an insufficient basis upon which to *assume* future compliance or provisioning success.[52]

When Bell Atlantic fails to perform its functions reliably and in a timely manner services to end-users are delayed, denied, or suffer in quality. Moreover, because Bell Atlantic is NorthPoint's only wholesale providers of network elements and related services in New York, each of Bell Atlantic's errors and incompetencies undermines the perceived quality of NorthPoint's services.

IV. CONCLUSION

Bell Atlantic states, "Just as [CLECs] did before the New York PSC, they will try to seize on competitively insignificant imperfections in Bell Atlantic's performance, pump them full of hot air, and use them to claim that the New York market is not open."[53] However, problems discussed above are not "competitively insignificant imperfections" but substantive failures on the part of Bell Atlantic to meet its obligations

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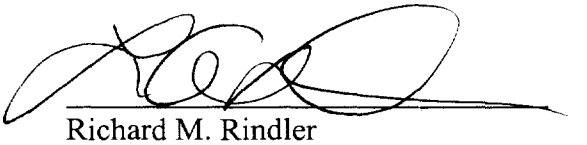
50 Bell Atlantic's reported data in its application with respect to DSL loop orders only captures its claimed performance before offering joint testing.

51 Aulisio Declaration at ¶ 10.

52 *Id.*

to CLECs. These failures threaten the very existence of the competitive DSL industry in New York. Therefore, for the reasons discussed above, the Commission should not find that Bell Atlantic has met the requirements of section 271 until Bell Atlantic proposes solutions to chronic problems with its systems and processes, Bell Atlantic implements those solutions, and the Commission verifies that Bell Atlantic is meeting its obligations to DSL CLECs under section 271.

Respectfully submitted,



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October 19, 1999

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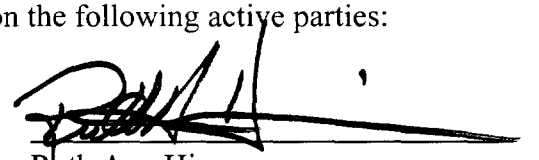
[53] Bell Atlantic Application at 3.

CERTIFICATE OF SERVICE

I, Ruth Ann Hinson, hereby certify that on this 19th day of October, 1999, I served a copy of the foregoing Comments of NorthPoint Communications, Inc.; in CCDocket No. 99-295 by courier (marked with "*"), or overnight delivery on the following active parties:



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